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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,382	02/06/2004	Larus Gunnsteinsson	GUNN3001/JEK/JJC	5746
23364	7590	05/04/2006	EXAMINER	
BACON & THOMAS, PLLC 625 SLATERS LANE FOURTH FLOOR ALEXANDRIA, VA 22314			KAVANAUGH, JOHN T	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/772,382

Applicant(s)

GUNNSTEINSSON ET AL.

Examiner

Ted Kavanaugh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 13-20 and 22-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-20 and 22-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 11, 2006 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. Claims 13-20,22-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In claims 13 and 24, **the phrase “the liner being vapor impervious” and “the liner is vapor impervious”, respectively is new matter.** There is no support for this in the disclosure and more specifically in the figures and paragraph 12,13,27,30 and 33 as noted by the applicant.

Applicant argues that the solid layer liner 16 as shown in figures 4B and 7 show no “pores” and therefore is vapor impervious.

In response, the specification has no support that the liner is “vapor impervious” and no indication that the liner 16 has no pores. Typically pores are so small that they

wouldn't be shown in the figures but instead are pointed out in the disclosure. Applicant has the burden of showing clear support for such features.

Applicant argues "the continuous cured elastomeric structure described in the above mentioned paragraphs in the specification is also inherently impervious to vapors or gases".

In response, a liner can be cured and still be pervious to vapors such as by having micro-pores or having pores introduced by some other means. Moreover, the liner is taught to be elastic and stretchable and therefore when stretched it would be more susceptible to being pervious to vapors.

**The phrase "the liner...formed from a continuously cured elastomeric" in claim 13 and "the liner including...a continuously cured silicone elastomeric layer" in claim 24 is new matter.**

In response, this language was first introduced in an amendment filed Jan. 5, 2006 and should have been previously pointed out as being new matter.

The silicone layer is taught to be coated in the inner surface of the liner 16 but there is no teaching of it being cured and moreover, "continuously cured". There is no support found in the disclosure and moreover, in paragraph 33, as noted by the applicant. There is support for a continuous layer but that is different from being "cured" and "continuously cured". It is the moldable sock structure 18 that is cured.

### ***Conclusion***

**3. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including:**

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**-“The reply must present arguments pointing out the *specific* distinctions believed to render the claims, including any newly presented claims, patentable over any applied references.”**

**--“A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.”**

**-Moreover, “The prompt development of a clear issue requires that the replies of the applicant meet the objections to and rejections of the claims. Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06” MPEP 714.02. The “disclosure” includes the claims, the specification and the drawings.**

4. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at [www.uspto.gov](http://www.uspto.gov).

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (571) 273-8300 **(FORMAL FAXES ONLY)**. Please identify Examiner Ted Kavanaugh of Art Unit 3728 at the top of your cover sheet.


Any inquiry concerning the MERITS of this examination from the examiner should be directed to Ted Kavanaugh whose telephone number is (571) 272-4556. The examiner can normally be reached from 6AM - 4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562.

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Ted Kavanaugh  
Primary Examiner  
Art Unit 3728

TK  
April 30, 2006